

considered as one year of service. In determining whether an individual is employed full-time, the amount of work which he is required to perform shall be compared with the amount of work which is normally required of individuals holding the same position with the same employer and who generally derive the major portion of their personal service income from such position.

(ii)(a) In measuring the amount of work required of individuals holding a particular position, any method that reasonably and accurately reflects such amount may be used. For example, the number of hours of classroom instruction is only an indication of the amount of work required, but it may be used as a measure.

(b) In determining whether positions with the same employer are the same, all of the facts and circumstances concerning the positions shall be considered, including the work performed, the methods by which compensation is computed, and the descriptions (or titles) of the positions. For example, an assistant professor employed in the English department of a university will be considered a full-time employee if the amount of work that he is required to perform is the same as the amount of work normally required of assistant professors of English at that university who derive the main portion of their personal service income from such position.

(c) In case an individual's position is not the same as another with his employer, the rules of this paragraph shall be applied by considering the same position with similar employers or similar positions with the same employer.

(iii) A full year of service for a particular position means the usual annual work period of individuals employed full-time in that general type of employment at the place of employment. For example, if a doctor employed by a hospital works throughout the 12 months of a year except for a one-month vacation, such doctor will be considered as being employed for a full year, if the other doctors at that hospital work 11 months of the year with a one-month vacation. Similarly, if the usual annual work period at a university consists of the fall and

spring semesters, an instructor at that university who teaches those semesters will be considered as working a full year.

(5) *Other employees.* (i) An individual shall be treated as having a fraction of a year of service for each year during which he was a full-time employee for part of the year or for each year during which he was a part-time employee for the entire year or for a part of the year.

(ii) In determining the fraction which represents the fractional year of service for an individual employed full time for part of a year, the numerator shall be the number of weeks (or months) during which the individual was a full-time employee in a position during that year, and the denominator shall be the number of weeks (or months) which is considered under subparagraph (4)(iii) of this paragraph as the usual annual work period for that position. For example, if an instructor is employed full time by a university for the 1959 spring semester (which lasts from February 1959 through May 1959), and the academic year of the university is 8 months long, beginning in October 1958, and ending in May 1959, then he is considered as having completed  $\frac{1}{2}$  of a year of service.

(iii) In determining the fraction which represents the fractional year of service of an individual who is employed part time for a full year, the numerator shall be the amount of work required to be performed by the individual, and the denominator shall be the amount of work normally required of individuals who hold the same position. The amount of work required to be performed by the individual and the amount of work normally required of individuals holding the same position shall be determined in accordance with the principles of subparagraph (4) of this paragraph. Thus, if a practicing physician teaches one course at a local medical school 3 hours per week for two semesters and other faculty members at that medical school teach 9 hours per week for two semesters, then the practicing physician is considered as having completed  $\frac{1}{3}$  of a year of service.

(iv) In determining the fraction representing the fractional year of service

of an individual who is employed part time for part of a year, it is necessary to compute the fractional year of service if the individual were a part-time employee for a full year, and the fractional year of service if the individual were a full-time employee for the part of a year. The two fractions shall be multiplied and the product is the fractional year of service of such individual who is employed part time for part of a year. For example, if an attorney who is a specialist in a subject teaches a course in that subject for 3 hours per week for one semester at a nearby law school, and the full-time instructors at that law school teach 12 hours per week for two semesters, then the fractional part of a year of service for such part-time instructor is computed as follows: The fractional year of service if the instructor were a part-time employee for a full year is  $\frac{3}{12}$  (number of hours employed divided by the usual number of hours of work required for that position); the fractional year of service if the instructor were a full-time employee for part of a year is  $\frac{1}{2}$  (period worked or one semester, divided by usual work period, or 2 semesters). These fractions are multiplied to obtain the fractional year of service:  $\frac{3}{12}$  times  $\frac{1}{2}$ , or  $\frac{3}{24}$  ( $\frac{1}{8}$ ).

(6) *Less than one year of service considered as one year.* If, at the close of a taxable year, an employee has, under the rules in this paragraph, a period of service of less than one year, such employee shall, nevertheless, be considered to have one year of service for purposes of computing his exclusion allowance for that taxable year. Such period of service of less than one year shall also be considered to be such employee's most recent one-year period of service for purposes of determining his includible compensation.

(7) *Most recent one-year period of service.* (i) In determining, for purposes of paragraph (e) of this section (relating to includible compensation), an employee's most recent one-year period of service, there is first taken into account all service performed by the employee during the taxable year for which the exclusion allowance is being determined. For this purpose, therefore, an employee's most recent one-year period of service may not be the

same as his employer's most recent annual work period. The rule in this subdivision may be illustrated by the following example: A, a professor who reports his income on a calendar year basis, is employed by a university on a full-time basis during the university's 1959-1960 and 1960-1961 academic years (October through May). For purposes of computing A's exclusion allowance for his 1960 taxable year, his most recent one-year period of service consists of his service performed during January through May, 1960 (which is part of the 1959-1960 academic year) and his service performed during October through December 1960 (which is part of the 1960-1961 academic year).

(ii) In the case of a part-time employee or a full-time employee who is employed for only part of a year, it will be necessary to aggregate his most recent periods of service to determine his most recent one-year period of service. In such a case, there is first taken into account his service during the taxable year for which the exclusion allowance is being determined; then there is taken into account his service during his next preceding taxable year and so forth until his service equals, in the aggregate, one year of service. For example, if an employee, who reports his income on the calendar year basis, is employed on a full-time basis during the months July through December 1959 ( $\frac{1}{2}$  year of service), July through December 1960 ( $\frac{1}{2}$  year of service), and October through December 1961 ( $\frac{1}{4}$  year of service), his most recent one-year period of service for purposes of computing his exclusion allowance for 1961 consists of his service during 1961 ( $\frac{1}{4}$  year of service), his service during 1960 ( $\frac{1}{2}$  year of service), and his service during the months October through December 1959 ( $\frac{1}{4}$  year of service).

(g) *Illustration of computation of exclusion allowance.* The exclusion provided under paragraph (b) of this section may be illustrated by the following example: A, a professor who reports his income on the calendar year basis, became a full-time employee of X University on October 1, 1958 (beginning of X University's 1958-1959 academic year) and continued as a full-time employee for the academic years 1958-1959, 1959-1960, and 1960-1961. X University was,

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during all such academic years, an organization described in section 501(c)(3) and exempt from tax under section 501(a). X University's academic year runs for a period of 8 months: October through May. A received an annual salary, all of which was includible in his gross income, of \$8,000 for the 1958-1959 academic year, \$8,800 for the 1959-1960 academic year, and \$9,600 for the 1960-1961 academic year. Starting in 1958, X University contributed amounts toward the purchase of annuity contracts for A and such purchase was not part of a qualified annuity plan. X University paid, as premiums for such contracts, \$1,000 in 1958, \$2,000 in 1959, \$2,400 in 1960, and \$1,400 in 1961. The amount of such premiums which is excludable from A's gross income for the year in which paid is computed as follows:

1958	
(1) Amount contributed by employer for annuity contracts in 1958 .....	\$1,000.00
(2) Includible compensation for most recent one-year period of service (since A was employed for only $\frac{3}{4}$ of a year at the close of 1958, this period is counted as most recent one-year period of service) $\frac{3}{4} \times \$8,000$ .....	\$3,000.00
(3) $20\% \times$ includible compensation .....	\$600.00
(4) Number of years of service (although A was employed for less than a year, he is considered to have one-year of service) .....	1
(5) Item (4) $\times$ item (3) .....	\$600.00
(6) Contributions excludable in prior taxable years of A .....	None
(7) Amount excludable from A's gross income for 1958 ((5)-(6)) .....	\$600.00
(8) Amount includible in A's gross income for 1958 ((1)-(7)) .....	\$400.00
1959	
(9) Amount contributed by employer for annuity contracts in 1959 .....	\$2,000.00
(10) Includible compensation for most recent one-year period of service. ( $\frac{3}{4} \times \$8,800 + \frac{1}{4} \times \$8,000$ ) .....	\$8,800.00
(11) $20\% \times$ includible compensation .....	\$1,660.00
(12) Number of years of service .....	1 $\frac{3}{4}$
(13) Item (12) $\times$ item (11) .....	\$2,282.50
(14) Contributions excludable in prior taxable years of A (item 7)) .....	\$600.00
(15) Amount excludable from A's gross income for 1959 ((13)-(14)) .....	\$1,682.50
(16) Amount includible in A's gross income for 1959 ((9)-(15)) .....	\$317.50
1960	
(17) Amount contributed by employer for annuity contracts in 1960 .....	\$2,400.00
(18) Includible compensation for most recent one-year period of service ( $\frac{3}{4} \times \$9,600 + \frac{1}{4} \times \$8,800$ ) .....	\$9,100.00
(19) $20\% \times$ includible compensation .....	\$1,820.00
(20) Number of years of service .....	2 $\frac{3}{4}$
(21) Item (20) $\times$ item (19) .....	\$4,322.50
(22) Contributions excludable in prior taxable years ((7) + (15)) .....	\$2,282.50

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(23) Amount excludable from A's gross income for 1960 ((21) - (22)) .....	\$2,040.00
(24) Amount includible in A's gross income for 1960 ((17) - (23)) .....	\$360.00
1961	
(25) Amount contributed by employer for annuity contracts in 1961 .....	\$1,400.00
(26) Includible compensation for most recent one-year period of service ( $\frac{3}{4} \times \$9,600 + \frac{1}{4} \times \$9,600$ ) .....	\$9,600.00
(27) $20\% \times$ includible compensation .....	\$1,920.00
(28) Number of years of service .....	3
(29) Item (28) $\times$ item (27) .....	\$5,760.00
(30) Contributions excludable in prior taxable years ((7) + (15) + (23)) .....	\$4,322.50
(31) Amount excludable from A's gross income for 1961 (item (25) since it is less than (29) - (30)) .....	\$1,400.00
(32) Amount includible in A's gross income for 1961 ((25) - (31)) .....	None

[T.D. 6783, 29 FR 18360, Dec. 24, 1964, as amended by T.D. 6885, 31 FR 7802, June 2, 1966; T.D. 7748, 46 FR 1696, Jan. 7, 1981; T.D. 7836, 47 FR 42337, Sept. 27, 1982; T.D. 8115, 51 FR 45736, Dec. 19, 1986]

### § 1.403(b)-2 Eligible rollover distributions; questions and answers.

The following questions and answers relate to eligible rollover distributions from annuities, custodial accounts, and retirement income accounts described in section 403(b) of the Internal Revenue Code of 1986, as amended by sections 521 and 522 of the Unemployment Compensation Amendments of 1992 (Public Law 102-318, 106 Stat. 290) (UCA). For additional UCA guidance under sections 401(a)(31), 402(c), 402(f), and 3405(c), see §§ 1.401(a)(31)-1, 1.402(c)-2, 1.402(f)-1, and § 31.3405(c)-1 of this chapter, respectively.

#### LIST OF QUESTIONS

Q-1: What is the rule regarding distributions that may be rolled over to an eligible retirement plan from annuities, custodial accounts, and retirement income accounts described in section 403(b)?

Q-2: Is a section 403(b) annuity required to provide the direct rollover option described in section 401(a)(31) as a distribution option?

Q-3: Is the payor of a section 403(b) annuity required to provide a distributee of an eligible rollover distribution with an explanation of the direct rollover option?

Q-4: When do sections 403 (b)(8) and (b)(10), as amended by UCA, and this § 1.403(b)-2 apply to distributions from section 403(b) annuities?